Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

JEROME DERRICK HARRIS,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Navron Ponds
Law Offices of Navron Ponds
1700 K Street, NW
Suite 903
Washington, DC 20006
(202) 833-1380

QUESTIONS PRESENTED

I. Did the district court err when it found that Petitioner obstructed justice because he did not volunteer information to the pre-sentence report writer regarding other possible crimes which were not covered by the plea agreement he entered and for which he had not been charged, or was his silence protected by the Fifth Amendment and this Court's ruling in *Mitchell* v. *United States*, No. 97-7541, slip op., 526 U.S. ____ (1999)

II. Did the district court err in not giving Petitioner a downward departure for acceptance of responsibility when the district court's denial was premised upon the assumption that Petitioner was obliged to waive his Fifth Amendment rights during the sentencing phase of his case?

III. Did the district court err in ruling that the mere sale of controlled substances to a co-conspirator without exercising control over that co-conspirator constitutes "leadership" or "organizer" as defined by the United States Sentencing Guidelines?

LIST OF PARTIES

The parties to this action are Petitioner and the United States of America. Petitioner is an individual and has no parent or subsidiary companies.

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PETITION FOR WRIT OF CERTIORARI

Jerome Derrick Harris ("Petitioner") respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on April 16, 1999, in order to resolve the conflict between the lower court's decision and U.S. Const., Fifth Amendment, as interpreted by the Supreme Court in *Mitchell v. United States*, No. 97-7541, slip op., 526 U.S._____(1999).

OPINIONS BELOW

The *per curiam* opinion of the United States Court of Appeals for the Fourth Circuit that gives rise to this petition is unpublished. It is reprinted in Appendix A. The judgment of the United States District Court of Maryland/Southern Division is likewise unreported and is reprinted in Appendix B.

JURISDICTION

On February 25, 1997 the United States District Court, District of Maryland/Southern Division issued its judgment of conviction in the instant case. Petitioner appealed the district court's findings: (1) that he had obstructed justice by not making certain admissions during an interview with the pre-sentence report writer, (2) that he was not entitled to a downward departure for acceptance of responsibility, and (3) that he was not the leader/organizer of five or more individuals. Timely appeal was taken from the district court's February 25, 1997 judgment to the United States Court of Appeals for the Fourth Circuit. Jurisdiction for the appeal to that court is provided for in 28 U.S.C. §1291. A panel of that court affirmed the district court's rulings in an un-published *per curiam* opinion filed April 16, 1999. Pursuant to Supreme Court Rule 13.1, this Petition has been filed within ninety days of the final judgment of the Court of Appeals.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C.§1254 (1).

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the U.S. Constitution Provides:

"No person...shall be compelled in any criminal case to be a witness against himself."

STATEMENT OF THE CASE

On October 25, 1996, Petitioner, Jerome Derrick Harris ("Petitioner") entered a plea of guilty to count one of a superseding indictment charging conspiracy to distribute and possession with the intent to distribute cocaine base, in violation of 21 U.S.C. §846. The plea of guilty in this case was made pursuant to a written plea agreement filed as part of the record below. The parties agreed and stipulated the applicable base level of Petitioner's guideline sentence.

The parties further signed a written plea agreement and an agreed upon statement of facts. The district court found that Petitioner's plea was knowingly and voluntarily

made, and accepted the guilty plea pursuant to the plea agreement and statement of facts.

The district court subsequently referred the matter to the United States Probation Office for the preparation of a pre-sentence report. When interviewed by the pre-sentence report writer regarding his employment history, Petitioner correctly reported his work history. Petitioner was never asked during the interview whether or not he owned any business establishments, and he gave no responses regarding this subject.

The pre-sentence report was submitted to the district court and the parties. The pre-sentence report writer did not recommend obstruction of justice on the part of Petitioner for not disclosing his purported ownership of any business establishments.

At the sentencing hearing, the district court ruled that Petitioner obstructed justice because he had not voluntarily disclosed to the pre-sentence report writer his purported ownership of two business establishments. The Government alleged in its responses to the completed pre-sentence report that Petitioner owned the two business. These allegations were never raised previously during Petitioner's case in the district court. Petitioner asserts that he never owned the businesses, but nevertheless maintains that he reserved his

Fifth Amendment right not to incriminate himself during the interview with the pre-sentence report writer. Because he was found to have obstructed justice, Petitioner was denied a downward departure for acceptance of responsibility. Additionally, the district court ruled that Petitioner was the leader/organizer of five or more individuals in the conspiracy.

REASONS FOR GRANTING THE PETITION

I. This Case Raises The Important Issue Of How Much, If Anything, A Defendant Must Reveal To The Pre-Sentence Report Writer Regarding Other Uncharged Potentially Criminal Conduct To Avoid An Enhancement For Obstruction Of Justice Pursuant To The Federal Sentencing Guidelines. The District Court's Ruling That Petitioner Is Guilty Of Obstruction Of Justice Because He Did Not Volunteer Voluntarily Incriminate Himself Is In Direct Conflict With Relevant Decisions Of This Court, Particularly *Estelle v .Smith*, 451 U.S. 454 (1981) and *Mitchell v. United States*, No. 97-7541, slip op., 526 U.S.____ (1999).

The critical issue before this Court is the determination of whether or not when Petitioner truthfully answered all of the questions asked of him pertaining to his employment history by the pre-sentence report writer but did not *sua sponte* volunteer responses to possibly other unrelated crimes he obstructed justice.

Petitioner was not asked if he owned the two establishments. Petitioner steadfastly maintains that he did not own either of these establishments. More importantly, Petitioner was not asked any questions at all by the pre-sentence report writer pertaining to his possible or probable ownership of these establishments or any other businesses. Additionally, Petitioner truthfully answered all questions asked of him regarding his employment. During the interview with the pre-sentence report writer, there was no reason or requirement for Petitioner to go beyond the questions asked of him and to volunteer either an acknowledgment or denial of these establishment. These issues were never mentioned during the interview.

This Court has just recently emphatically and unequivocally held in *Mitchell* v. *United States*, No. 97-7541, slip op., 526 U.S. ____ (1999) that a defendant maintains his or her Fifth Amendment privileges after

entering a guilty plea. In *Mitchell, id.*at 6, this Court directly states:

> The Government maintains that Petitioner's guilty plea was a waiver of the privilege against compelled self-incrimination with respect to all the crimes comprehended in the plea. We hold otherwise and rule that petitioner retained the privilege at [her] sentencing hearing.

This Court explains the purpose of the query pursuant to Federal Rules of Criminal Procedure 11 as follows:

> The purpose of Rule 11 is to inform the defendant of what she loses by foregoing the trial, not to elicit a waiver of the privilege for proceedings still to follow. A waiver of a right to trial with its attendant privileges is not a waiver of privileges which exist beyond the confines of the trial.

This Court further states in *Mitchell, id.* at 9-10:

> Treating a guilty plea as a waiver of the privilege at sentencing would be a

> grave encroachment on the rights of defendants... The result would be to enlist the defendant as an instrument in his or her own condemnation, undermining the long tradition and vital principle that criminal proceedings rely on accusations proved by the Government not on inquisitions conducted to enhance its own prosecutorial power. *Rogers v. Richmond*, 365 U.S. 534, 541 (1961) (" [0] ours is an accusatorial and not an inquisitorial system").

As noted above, in the instant case Petitioner was never asked by the pre-sentence report writer whether or not he owned the two establishments in question. Thus, the instant case represents an even more egregious violation of Petitioner's Fifth Amendments rights than were present in *Mitchell*. Petitioner had no obligation to *sua sponte* volunteer a denial or acknowledgment of the two establishments in question. As this Court states in *Mitchell, id.* at 11: " Where the sentence has not yet been imposed a defendant may have a legitimate fear of adverse consequences from further testimony." In the instant case any further voluntary response by Petitioner could have left

him open to a host of very serious charges for other crimes for which he had not been charged or perjury if the Government did not accept his denial, as it apparently does not. It is important to note that Petitioner plead guilty solely to conspiracy to distribute and possess with the intent to distribute cocaine and cocaine base.

During the interview with the pre-sentence report writer there was no hint or indication by the pre-sentence writer that she even sought responses regarding the ownership of the two establishments in question. This issue was just never raised, and Petitioner would have had to be clairvoyant to know whether or not this was even on the pre-sentence report writer's mind.

The Government is explicitly asserting that Petitioner should have voluntarily provided statements about other possible uncharged crimes that had nothing to do with his indictment or his plea agreement. The Government's position in essence, is that Petitioner should voluntarily confess to other uncharged crimes for which he had not been indicted, did not enter a plea to, which he adamantly denies, and for which he had no immunity.

The Government is *de facto* asserting that Petitioner did not maintain a Fifth Amendment privilege against self-

incrimination vis-à-vis other possible crimes outside of those to which he had entered a plea. If this position of the Government is supported, a defendant can be arrested on the simplest charge and if he pleads guilty to that charge can be found to have obstructed justice if he or she fails to confess to other more serious charges which the Government believes he or she is guilty of. This totally violates the essential principle of criminal justice that it is the burden of the Government to prove that a defendant committed an alleged crime, and not the defendant's obligation to voluntarily convict himself. This Court has previously so ruled in *Estelle v. Smith*, 451 U.S. 454, 463 and this court has embraced that proposition again in *Mitchell.*

In *Estelle, id.* at 463 this Court stated:

> The essence of this basic constitutional principle is "the requirement that the State which proposes to convict and punish an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips." Culombe v. Connecticut, 367 U.S. 568, 581-582 (1961).

This Court stated in *Mitchell, supra*, at 12:

> The Fifth Amendment by its terms prevents a person from being "compelled in any criminal case to be a witness against himself." U.S. Const. Amdt.5. To maintain that sentencing proceedings are not part of "any criminal case" is contrary to the law and to common sense.

Additionally, in *Estelle, supra*, at 463-464, this Court stated: "We can discern no basis to distinguish between the guilt and penalty phase of respondent's capital murder trial so far as the protection of the Fifth Amendment privilege is concerned."

USSG §3C1.1 states that there must be a willful attempt to obstruct justice before an enhancement can be given. See *United States v. Belltiere*, 971 F. 2nd 961 (1993). In the instant case the Government has failed to make a case that Petitioner willfully attempted to obstruct justice.

It is important to note that the Government acknowledges that it had hearsay statements that Petitioner owned the establishments in question. If that is the case then

the Government already had information and was not obstructed in any way. The Government was merely hoping to force something from Petitioner's own lips which he denies.

Finally, and importantly, the pre-sentence report writer did not consider the employment responses made by Petitioner to be grounds for an obstruction of justice enhancement, and did not ask for one based on his responses regarding his employment.

II. Can A Defendant Obtain A Reduction In His Sentence For Acceptance Of Responsibility Where He Refuses To Incriminate Himself To The Pre-Sentence Report Writer By Admitting To Uncharged Conduct, In Violation Of His Fifth Amendment Rights?

Petitioner has fully and freely admitted and acknowledged his involvement in the crimes charged. First, it should be noted that immediately following his arrest in this case, on July 10, 1996, Petitioner provided a full statement of his involvement to the arresting officers. Subsequently, he entered a plea of guilty at an early stage of the proceedings. Third, both orally and in writing, he

agreed fully with a stipulation of facts prepared by the United States Attorney. Finally, the pre-sentence report writer found that Petitioner freely "demonstrated an acceptance of personal responsibility for his criminal conduct."

However, the district court, declined to award a reduction for acceptance of responsibility because of the aforementioned enhancement for obstruction of justice. U.S.S.G. §3E1.1 indicates that acceptance of responsibility is ordinarily not available to anyone who obstructs justice. As explained above, because Petitioner did not obstruct justice, he would consequently be eligible for an adjustment for acceptance of responsibility.

III. Does The Mere Participation In A Conspiracy Make An Individual A "Leader" Or "Organizer" Or Is More Than That Required Pursuant To The Federal Sentencing Guidlines?

Prior to the instant case, it was well-established that the terms "organizer" and "supervisor" were to be given their usual and ordinary meanings, *United States v. Butler*, 885 F.2d 195, 201 (4th Cir.1989), and that courts must give the managerial requirement a "common sense reading." *United*

States v. Wilson, 135 F.3d 291 303 (4th Cir. 1998) (citing *Garrett v. United States*, 471 U.S. 773, 781 (1985).

The evidence in the instant case failed to show that Petitioner exercised the requisite power or authority over five or more individuals. The Government was required to prove Petitioner's role in the offense by a preponderance of evidence. See *Mcmillan v. Pennsylvania*, 477 U.S. 79 (1986).

The following factors are to be considered when distinguishing between a managerial role and an organizational role: (1) the exercise of decision making authority; (2) the nature of participation in the commission of the offense; (3) the recruitment of accomplices; (4) the claimed right to a larger share of the crime; (5) the degree of participation in planning or organizing the offense; (6) the nature and scope of the illegal activity; and (7) the degree of control and authority exercised over others. USSG §3B1.1, comment 4; *United States v. Sheffer*, 896 F.2d 842, 846 (4th Cir.1990).

In the instant case, the Government argued that to be eligible for this enhancement, it need not show that Petitioner actually supervised five or more persons, but only that he was involved in criminal activity that involved five or more

persons or such activity was otherwise extensive. Petitioner asserts that mere involvement alone is insufficient, and that leadership or control is necessary.

The district court did not resolve the conflicting position regarding Petitioner's role, instead stating that it was relying upon the statement of facts that were pleaded to in this case. Petitioner readily admits that he bought and sold drugs from various individuals. However, he adamantly denies that he controlled or managed these individuals. Petitioner maintains that there were a number of independent individuals buying and selling drugs to and from one another.

The district court could and did make the requisite findings as to the number of persons involved in the conspiracy but did not make the necessary findings that Petitioners was the leader or organizer. The district court's finding was insufficient, but in any case it failed to establish the leadership role of Petitioner satisfying itself that mere membership in the conspiracy is sufficient. This was clear error. *United States v. Kincaid*, 94 F.2d 325 (4th Cir. 1992); *United States v. Bengali*, 11 F.3d 1207 (4th Cir. 1993); *United States v. Capers*, 161 F.3d 1100(4th Cir. 1995).

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,	*	
Plaintiff-Appellee,	*	
v.	*	97-4182
JEROME DERRICK HARRIS, a/k/a	*	
Michael Braxton, a/k/a Rome, a/k/a	*	
Jerome Privott,	*	
Defendant-Appellant.	*	

****

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Peter J. Messitte, District Judge.
(CR-96-260-PJM)

Argued: March 4, 1999

Decided: April 16, 1999

Before WILKINS, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Navron Ponds, Washington, D.C., for Appellant. David Ira Salem, Assistant United States Attorney, Greenbelt, Maryland, for Appellee. **ON**

BRIEF: Lynne A. Battaglia, United States Attorney, Greenbelt, Maryland, for Appellee.

UNITED STATES v. HARRIS

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Jerome Derrick Harris appeals his sentence for conspiracy to distribute and to possess with the intent to distribute cocaine and cocaine base, see 21 U.S.C.A. §846 (West Supp. 1998). arguing that the district court erred in its application of the United States Sentencing Guidelines by (1) finding that he obstructed justice, see U.S. Sentencing Guideline Manual § 3C1.1 (1995); (2) failing to grant him a reduction for acceptance of responsibility, see U.S.S.G. §3E1.1; (3) imposing an enhancement for possession of a dangerous weapon, see U.S.S.G. §2D1.1 (b)(1); (4) finding that he was a leader or organizer of a drug conspiracy that involved five or more participants, see U.S.S.G. §3B1.1(a); and (5) determining his criminal history, see U.S.S.G. Ch. 4, Pt. A. We Affirm.

I.

The district court based the obstruction of justice enhancement on a determination that Harris misrepresented his employment history to the probation officer who prepared the presentence report. Because the district court concluded that Harris had obstructed

justice, the court also refused to grant a reduction for acceptance of responsibility.

The enhancement for possession of a dangerous weapon was based on evidence that a weapon which tested positive for cocaine residue was recovered from Harris' residence, where Harris and his coconspirators converted cocaine base. The enhancement also was based on evidence of the recovery of another firearm from a hidden compartment in Harris's jeep.

The district court based its finding that Harris was a leader or organizer of a drug conspiracy involving five or more participants in part on evidence that at leastthree people made drug deliveries for Harris and that

Harris directed another to install hidden compartments in his vehicles to aid in drug trafficking.

Finally, the district court added two points to Harris' criminal history because Harris committed the instant offense while a violation warrant from a prior sentence was outstanding. See U.S.S.G. §4A1.2(m). The court also added one criminal history point because Harris committed the instant offense within two years of his release from a prior federal drug sentence. See U.S.S.G. §4A1.1(e).

II.

Having had the benefit of oral argument and the parties' briefs, and after careful consideration of the record and the applicable law, we conclude that the district court did not commit reversible error in deciding the issues before it. Accordingly, we affirm.

AFFIRMED

APPENDIX B

AO 245B (Rev. 3/95) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

JEROME DERRICK HARRIS

THE DEFENDANT:

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **8:96CR00260-001**

Navron Ponds
Defendant's Attorney

X pleaded guilty to count(s) **1 of Superseding Indictment** filed lodged

pleaded nolo contendere to count(s) Entered Received which was accepted by the court.

was found guilty on count(s) MAR 03 1997 after a plea of not guilty.

Title & Section	Nature of Offense
21 U.S.C. 846	Conspiracy to Distribute w/intent to Distri. Cocaine & Cocaine Base, Sch.II NCS

Date Offense Concluded	Count Number(s)
07/05/1996	3-3-97

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

X Count(s) 2-6 of Superseding Indictment are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. No.: 577-25-5027

02/25/1997

Date of imposition of judgment

Defendant's Date of Birth: 09/05/1963

B-3

Defendant's USM No.: **49852-083**

Defendant's Residence Address:

5911 Crown Street

Capital Heights MD 20743

Defendant's Mailing Address:

5911 Crown Street

Capital Heights MD 20743

_____

Signature of Judicial Officer

PETER J. MESSITTE

UNITED STATES DISTRICT JUDGE

Name & Title Judicial Officer

Date: **2/28/97**

245B (Rev. 3/95) Sheet 3 - Imprisonment

Judgment - Page 2 of 6

DEFENDANT: JEROME DERRICK HARRIS

CASE NUMBER: 8:96CR00260-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to by imprisoned for a total term of life .

The court makes the following recommendations to the Bureau of Prisons:

X The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m./p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshall.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

245B (Rev. 3/95) Sheet 4 - Supervised Release

Judgment - Page 3 of 6

DEFENDANT: JEROME DERRICK HARRIS

CASE NUMBER: 8:96CR00260-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 10 year(s).

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant

poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). the defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Sheet 3.01

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
(2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
(4) the defendant shall support his or her dependents and meet other family responsibilities;

(5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
(6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
(7) the defendant shall refrain from excessive use of alcohol;
(8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
(9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
(10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
(11) the defendant shall notify the probation within seventy-two hours of being arrested or questioned by a law enforcement officer;
(12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
(13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JEROME HARRIS

CASE NUMBER: 8:96CR00260-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall submit to evaluation and participate in any substance abuse program as directed by U.S. Probation Officer, including urine surveillance.

The defendant shall provide financial information to probation officer, including periodic affidavits regarding whereabouts of any property purchased with illegally obtained funds.

DEFENDANT: JEROME HARRIS
CASE NUMBER: 8:96CR00260-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

Totals:

Assessment	Fine	Restitution
$100.00	$52,000.00	$

if applicable, restitution amount ordered pursuant to plea agreement..... $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived.

The interest requirement is modified as follows:

RESTITUTION

The determination of restitution is deferred in a case brought under Chapters 109A, 110, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until _____. An Amended Judgment is a Criminal Case will be entered after such determination.

The defendant shall make restitution to the following payees in the amounts listed below.

245B (Rev. 3/95) Sheet 5 Part A - Criminal Monetary Penalties

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specific otherwise in the priority order or percentage payment column below.

Name of Payee	Priority Order or percentage of payment
**Total Amount of Loss	Amount of Restitution ordered

Totals: $ _____ $ _____

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses

245B (Rev. 3/95) Sheet 5 Part B - Criminal Monetary Penalties

_____

_____

_____

DEFENDANT: JEROME DERRICK HARRIS

CASE NUMBER: 8:96CR00260-001

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal, (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A X in full immediately; or

B $ _____ immediately, balance (in accordance with C,D,or E); or

C not later than _____; or

D in installments to commence _____ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E in _____(e.g. equal, weekly, monthly, quarterly) installments of $_____ over a period of _____ year(s) to commence _____ day(s) after the date of this judgment.

The National Fine Center will credit the defendant for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

The defendant shall pay the cost of prosecution.

The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States Courts National Fine Center, Administrative Office of the United States Courts, Washington, DC 20544, except those payments made through the Bureau of Prison's Inmate Financial Responsibility Program. If the National Fine Center is not operating in this district, all criminal monetary penalty payments are to be made as directed by the court, the probation officer, or the United States attorney.

_____

_____

_____

DEFENDANT: JEROME DERRICK HARRIS

CASE NUMBER: 8:96CR00260-001

STATEMENT OF REASONS

X The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 46

Criminal History Category: IV

Imprisonment Range: _____ to Life months

Supervised Release Range: _____ to 10 Years

Fine Range: $ 25,000.00 to $ 4,000,000.00

Fine waived or below the guideline range because of inability to pay.

Total Amount of restitution: $ 0.00

X Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims pursuant to 18 U.S.C. § 3663(d).

For offenses that require total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and

do not allow the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

Partial restitution is ordered for the following reason(s):

X The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is impose for the following reason(s)

OR

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.
for the following specific reason(s):